

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 6/1/2022
---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
:  
MERCY CASTILLO, JESSICA LORA, and :  
ULISES RODRIGUEZ, *individually and on behalf of all:* :  
*others similarly situated,* :  
Plaintiffs, :  
:  
- against - :  
:  
“EL SAN JUAN” CITY ISLAND ON 5TH AVE :  
LLC, MANUEL VIDAL, and JOSEFINA VIDAL, :  
:  
Defendants. :  
:  
----- X  
GREGORY H. WOODS, District Judge:

1:21-cv-02824-GHW

ORDER

On April 13, 2022, the Court held a hearing on the motion to withdraw by counsel for Defendants Manuel Vidal and Josefina Vidal (the “Individual Defendants”). Counsel for the Individual Defendants stated, as grounds for his motion, that Defendants had been unwilling to participate in discovery in this case. Defendants were ordered to attend that hearing. They did not initially do so. Accordingly, the Court contacted Mr. Vidal via telephone during that conference, who then participated via telephone.

During that conference, the Court granted the Individual Defendants’ counsel’s motion to withdraw. The Court scheduled a conference for May 16, 2022 and ordered the Individual Defendants to appear at that conference either in person or via newly-retained counsel. Dkt. No. 57. Neither the Individual Defendants nor any newly-retained counsel for Defendants appeared at the May 16, 2022 conference.

Following that conference, the Court entered an order adjourning the conference to June 1, 2022 at 3:00 p.m. Dkt. No. 58. The Court ordered the Individual Defendants, as well as Defendant “El San Juan” City Island on 5th Ave. LLC (together, “Defendants”), to attend that conference. *Id.*

The Court stated that if Defendants did not appear, the Court would enter default judgment against them. *Id.* None of the Defendants appeared at the June 1, 2022 conference.

Pursuant to Federal Rule of Civil Procedure 16 a court may, on motion or on its own, “issue any just orders” if a party “fails to appear at a schedule or other pretrial conference” or “fails to obey a scheduling or other pretrial order.” Fed. R. Civ. P. 16(A), (C); *see also Trustees of the Paper Prod., Miscellaneous Chauffers, Warehousemen & Helpers Union Local 27 Welfare Tr. Fund & Pension Fund v. J & J Int’l Logistics, Corp.*, No. 12-cv-1475-ILG-WMS, 2013 WL 5532710, at \*2 (E.D.N.Y. Oct. 4, 2013) (“A court may impose a range of sanctions on a party which fails to appear at conferences or to comply with scheduling and other pretrial orders including, among other things, striking pleadings and rendering a default judgment.”). “Among the factors to be considered when imposing sanctions are: (1) the party’s history of noncompliance; (2) the effectiveness of lesser sanctions; (3) whether a warning had been issued regarding imposition of sanctions; and (4) whether imposing lesser sanctions would prejudice the moving party.” *Trustees of the Paper Prod.*, 2013 WL 5532710, at \*2.


Here, Defendants have failed to comply with the Court’s orders to appear at three separate conferences. “[A]ll litigants . . . have an obligation to comply with court orders,’ and failure to comply may result in sanctions” *Agival v. Mid Island Mortg. Corp.*, 555 F.3d 298, 302 (2d Cir. 2009) (quoting *Minotti v. Lensink*, 895 F.2d 100, 103 (2d Cir.1990)). Defendants have been repeatedly reminded of their obligation to comply with the Court’s orders, and have been warned that failure to do so would result in the entry of default judgment. As a result, the Court concludes that Defendants have willfully ignored this Court’s orders and have abandoned their responsibilities in this action. Moreover, Defendants’ continued unwillingness to participate in this action confirms that the only sanction that will compel compliance is entering a certificate of default.

The Court expects that any motion for default judgment will be filed no later than July 5, 2022.

The Clerk of Court is directed to enter a certificate of default with respect to Defendants and to mail a copy of this order to the Individual Defendants by certified and first class mail.

SO ORDERED.

Dated: June 1, 2022  
New York, New York

  
\_\_\_\_\_  
GREGORY H. WOODS  
United States District Judge